Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	)	WC Docket No. 18-89
	)	
	)	

COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

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SUMMARY

Disbursing reimbursement funds for the replacement of covered company equipment is essential to both protecting U.S. telecommunications networks and keeping Americans connected. The FCC must put RWA's impacted members in the position to continue using their universal service funding to maintain their networks, while swiftly moving forward with a clear and equitable plan to assist them in replacing Huawei and ZTE products and services in their respective networks. The rapidly approaching deadline that will restrict their use of USF to maintain these potentially compromised networks will leave many rural carriers without a viable solution to continue to operate. The FCC must carefully thread the needle on timing of cutting off USF support while ensuring the distribution of funds authorized by the Secure Networks Act which has yet to be appropriated by Congress. By balancing national security interests with the need to keep rural America connected, the Commission can best ensure a smooth migration and thereby serve the public interest by: (1) allowing ample time for carriers to estimate their reimbursement costs and complete their applications for funding in the event of delays by third-parties for which small rural carriers have no control; (2) disbursing reimbursement funds equitably among participants (i.e., proportionally) until such time when Congress can provide additional funding should there be insufficient funding initially appropriated; (3) extending the time USF support can be used to maintain current networks in order to assist carriers in completing the replace-and-remove process within the statutory mandated 12-month period; (4) tolling the 12-month project completion period by distributing reimbursement funds in phases and granting 6 month extensions after a tolling period to the extent needed; and (5) creating a "safe list" that specifically provides clear guidance on acceptable vendors, products and services to be purchased, including permitting virtual network equipment and services.

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The Rural Wireless Association, Inc. ("RWA")[1] submits these comments in response to the *Public Notice*[2] released by the Federal Communications Commission's ("FCC" or "Commission") Wireline Competition Bureau ("WCB") on April 13, 2020 seeking comment on how Section 4 of the recently enacted Secure and Trusted Communications Networks Act of 2019[3] impacts the Commission's rulemaking efforts in the National Security Supply Chain proceeding (WC Docket No. 18-89).

In November 2019, the Commission adopted its *Report and Order*[4], which among other things, restricts eligible telecommunications carriers ("ETCs") from using universal service fund

[1] RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling in rural America. RWA's members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA's member companies serves fewer than 100,000 subscribers.

[2] "Wireline Competition Bureau Seeks Comment on the Applicability of Section 4 of the Secure and Trusted Communications Networks Act of 2019 to the Commission's Rulemaking on Protecting Against National Security Threats to the Communications Supply Chain," Public Notice, WC Docket No. 18-89, DA 20-406 (April 13, 2020) ("*Public Notice*").

[3] Pub. L. 116-124, 133 Stat. 158 (2020) ("Secure Networks Act").

[4] *In the Matters of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, Huawei Designation, ZTE Designation*, Report and Order, Further Notice of Proposed Rulemaking, and Order, WC Docket No. 18-89, PS Docket Nos. 19-351, 19-352, FCC 19-121 (released November 26, 2019) ("*Report and Order"*).

("USF") support "to purchase equipment or services from any company identified as posing a national security risk to communications networks or the communications supply chain."[5] In that same *Report and Order*, the Commission also: (1) "initially" designated Huawei Technologies Company Ltd. ("Huawei") and ZTE Corporation ("ZTE") as covered companies; and (2) sought comment on a proposal that would require ETCs to remove and replace covered company equipment upon adoption of a funded reimbursement mechanism. The Secure Networks Act requires Congressional appropriation of funds in order for the FCC to effectuate the reimbursement program it is tasked to design and manage. Given that the United States must transition from the use of Huawei and ZTE equipment and services as quickly as possible, it is imperative that the FCC design and manage a reimbursement program that avoids service disruptions to communications networks, especially in rural America, and to make sure rural telecommunications carriers are not left in financial ruin.

I. THE COMMISSION MUST ENSURE THAT ALL OF ITS ACTIONS IN ITS SUPPLY CHAIN PROCEEDING CLOSELY ADHERE TO THE PROVISIONS OUTLINED IN THE SECURE NETWORKS ACT.

The Commission must trace each and every decision it makes back to some clearly defined act of Congress. The Secure Networks Act, which was signed into law on March 12, 2020, governs the replacement of equipment and services in the communications supply chain and how the U.S. can maintain national security over these touchpoints. Any and all Commission actions in WC Docket 18-89 and the designation dockets of PS Docket 19-351 (Huawei) and PS Docket 19-352 (ZTE) must be consistent with the entirety of the Secure Networks Act. Indeed, while the Commission's *Public Notice* seeks comment on the impact of Section 4 ("Secure and Trusted Communications Networks Reimbursement Program") of the

[5] *Public Notice* at p. 1. Companies identified by the Commission as posing such a network security risk are referred to as "covered companies."

Secure Networks Act on the ongoing rulemaking in WC Docket 18-89, other sections of the same law heavily impact the Commission's legal authority in the rulemaking process and the objectives of the final rules themselves.[6]

To the extent the Secure Networks Act conflicts with the 2019 NDAA,[7] the Communications Act of 1934, as amended, or any other laws upon which the Commission purports to base its legal authority, then the Commission, the WCB, the Public Safety and Homeland Security Bureau ("PSHSB"), and any other FCC bureau or task force must seek public comment about those potential legal authority conflicts and proceed with caution before the Commission promulgates final rules. Likewise, to the extent the Commission cannot find that it has the requisite legal authority, it must abstain from further action. This is not to say that the Commission must scrap the rulemaking process already in place and re-start with something new. Rather, because time is of the essence, the Commission needs to maintain the current process but remain vigilant that all action is squarely grounded in the proper and most recent legal authority: the Secure Networks Act. In short, the Commission's *Report and Order* and any subsequent actions arising from it must not run counter to the Secure Networks Act.

II. THE TERM "PROVIDER OF ADANCED COMMUNICATIONS SERVICE" SHOULD BE DEFINED BROADLY.

The reimbursement program contemplated in the Secure Networks Act has various eligibility requirements, the most important of which is that any applicant seeking reimbursement funding must have two million or fewer customers and be a "provider of

[6] For example, Section 2 ("Determination of Communications Equipment or Services Posing National Security Risks") and Section 3 ("Prohibition on Use of Certain Federal Subsidies") of the Secure Networks Act were not open to comment in the *Public Notice*, and those sections heavily impact the Commission's ongoing rulemaking.

[7] John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, 132 Stat. 1283 ("2019 NDAA").

advanced communications service."[8] The term "advanced communications service" in the context of the Secure Networks Act has the same meaning given to "advanced telecommunications capability" as that latter term is defined in Section 706 of the Telecommunications Act of 1996.[9] Under Section 706, "advanced telecommunications capability" "is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology."[10] Just last month, the Commission released its *2020 Broadband Deployment Report*, which categorically determined that while fixed and mobile services were not "full substitutes…both services still independently met the statutory definition of advanced telecommunications capability."[11] Thus, the term "provider of advanced communications services" as used in the Secure Networks Act should be interpreted broadly, and include all manner of fixed and mobile providers of broadband services, including those advanced telecommunications and information services deployed in schools and hospitals.[12]

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[8] 47 U.S.C. § 1603(b).

[9] 47 U.S.C. § 1608 (1). ("The term 'advanced communications services' has the meaning given the term 'advanced telecommunications capability' in section 1302 of this title.").

[10] 47 U.S.C. § 1302(d)(1).

[11] *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Deployment Report, GN Docket No. 19-285, FCC 20-50 (released April 24, 2020) ("*2020 Broadband Deployment Report"*).

[12] 47 U.S.C. § 254(h)(2)(A). ("The Commission shall establish competitively neutral rules – (A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary classrooms, health care providers, and libraries.")

When the Commission first sought comment under the *Report and Order* on who should be eligible for reimbursement, RWA argued that true national security will only come about if all covered equipment and services - - however defined by national security experts - - is completely removed from the U.S. Any replace-and-remove mandate should be applied broadly, regardless of who operates the covered company equipment or their eventual end users. Specifically, RWA advised the Commission that "the ability to participate in such a replacement program needs to be open to all users of such equipment, whether they are USF recipients, ETCs, or neither."[13] Long term success maintaining America's national security can only be measured by "the 100% elimination of covered company equipment" from within the jurisdiction of the U.S., even if the equipment or services threatening national security that must be removed benefit schools, libraries, health care centers, or more commonly, traditional telecommunications providers that are not ETCs or do not receive USF support.[14] Section 4(b) of the Secure Networks Act provides the Commission the legal authority to expand any reimbursement program to include equipment and services that must be replaced beyond what is contemplated by the *Report and Order*.

III. CERTAIN PROVISIONS WITHIN THE SECURE NETWORKS ACT COMPEL THE COMMISSION TO MODIFY THE REIMBURSEMENT PROCESS ORIGINALLY PROPOSED IN THE *REPORT AND ORDER*.

The *Public Notice* mentions several Secure Networks Act provisions that direct the Commission to structure the application filing and review process in a certain manner.[15] For

[13] Comments of the Rural Wireless Association, WC Docket No. 18-89 (filed February 3, 2020) ("RWA February 2020 Comments") at p. 3.

[14] Reply Comments of the Rural Wireless Association, WC Docket No. 18-89 (filed March 3, 2020) ("RWA March 2020 Reply Comments") at p. 21.

[15] *Public Notice* at p. 2. ("[U]nder the statute, the Commission must: (1) require applicants to provide initial reimbursement cost estimates; (2) act on applications within 90 days of submission unless a 45 day extension is

example, the law requires the Commission to approve or deny a reimbursement application within 90 days.[16] It also allows for the grant of a 45-day extension if the FCC staff is overwhelmed by applications and application processing requires more time.[17] While the *Report and Order* did not propose specific application review times, RWA strongly supports an accelerated application-review process and the 90-day turn-around is appropriate. RWA encourages the FCC to work with applicants to determine additional support and information needed to grant the applications so that reimbursement can be granted expeditiously.

The new law also requires applicants "to provide an initial reimbursement cost estimate at the time of application, with supporting materials substantiating the costs."[18] As the Commission is fully aware, all ETCs currently using Huawei and ZTE equipment are already submitting information in the information collection portal, which closes on May 22, 2020.[19] In fact, several RWA members who are not ETCs are also submitting information on a voluntary basis for this information collection process. Therefore, requiring the same or similar information in the actual reimbursement application process is not unduly burdensome, provided, however, that the Bureau continues to provide answers to questions submitted by potential or actual program participants, similar to what it is doing now through the

warranted; (3) provide applicants an opportunity to cure a deficiency; (4) require certifications as to the applicant's plan and timeline; and (5) 'make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants.'").

[16] 47 U.S.C. § 1603(d)(3)(A)(i).

[17] 47 U.S.C. § 1603(d)(3)(A)(ii).

[18] 47 U.S.C. § 1603(d)(2)(B)(i).

[19] "Wireline Competition Bureau and Office of Economics and Analytics Open Reporting Portal for Supply Chain Security Information Collection," Public Notice, WC Docket No. 18-89, DA 20-166 (released February 26, 2020).

SupplyChainData@fcc.gov e-mail portal. Providing guidance early in the application process will drastically decrease the number of applications that need to be supplemented or corrected. The Secure Networks Act obligates the Commission to provide a 15-day period in which applicants can "cure" defective applications.[20] However, nothing in the law prevents the Commission from extending that 15-day period. It is entirely possible that the items requiring clarification also require input by third parties (*e.g.*, equipment manufacturers, RF engineering consultants, for-hire tower crews, etc.). It would be unfair that after a service provider spends years preparing for a major network transition, its application to the FCC for reimbursement is denied because of a delay by a third party. RWA respectfully requests that the Commission provide an application cure period beyond the 15-day period, if warranted by third party delays or other delays outside the control of the applicant.

The Commission also seeks input on other matters pertaining to reimbursement applications and how reimbursement funds are distributed, including proposals that would require the Commission to: (1) require an applicant to certify its replace-and-remove plans and timeline; and (2) take reasonable effort to ensure that reimbursement funds are distributed equitably among all applicants. RWA agrees with both of these proposals. Importantly, with respect to the latter proposal, it would make sense that instead of funding some qualifying applicants and not others, the FCC should instead grant an equitable (*i.e.* proportional) percentage of reimbursement funding to each qualified applicant and then push Congress for additional funding - - which the Secure Networks Act explicitly allows.[21]

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[20] 47 U.S.C. § 1603(d)(3)(B).

[21] 47 U.S.C. § 1603(d)(5)(B). ("If, at any time during the implementation of the Program, the Commission determines that $1,000,000,000 will not be sufficient to fully fund all approved applications for reimbursements under the Program, the Commission shall immediately notify – (i) the Committee on Energy and Commerce and the

The Bureau's *Public Notice* seeks comment on a variety of items regarding the equipment reimbursement process. Many of these concepts were first raised in the *Report and Order*. However, because Congress adopted the Secure Networks Act after the *Report and Order* was adopted, and Section 4 of that law compels the Commission to structure and manage the reimbursement process in a manner that differs from how the Commission first broached this project, there are many concepts of the reimbursement process that remain unsettled. For example, reimbursement recipients are to use reimbursement funds solely for "permanently removing" covered equipment, "replacing" covered equipment, *and* "disposing" of covered equipment.[22] The law does not require an applicant to perform all three reimbursable activities in order to qualify for reimbursement for those it does perform. For example, there is no reason why a qualified applicant who removes existing covered equipment but chooses not to replace such equipment (e.g., by electing to turn down its existing networks and migrating its traffic to other existing networks) should not be eligible for reimbursement. Similarly, many providers acquired covered equipment which was intended to be put into service as back-ups or spares, or to be deployed at expansion sites where no current installations exist. The federal policy strongly supports preventing such equipment from being deployed in any configuration rather than leaving it available for future use.

The common sense approach is one that compensates a provider who is holding currently undeployed covered equipment by reimbursing it for the original equipment cost and the costs of removal and destruction while leaving the provider free to use the funds in the way

Committee on Appropriations of the House of Representatives; and (ii) the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate.")

[22] 47 U.S.C. § 1603(c)(1)(A)-(C).

that most efficiently and economically meets its and the public's current needs. This could be by offering service at different locations on different frequencies under different service plans under different business structures that meet the needs of today's 5G world rather than tying the reimbursement to an artificially imposed replica of a bygone network. This approach would also save the government the reimbursement money which would have to be spent on new equipment.

IV. WIRELESS NETWORKS TYPICALLY REQUIRE YEARS TO DEPLOY, NOT MONTHS, AND THE COMMISSION MUST GRANT EXTENSIONS TO COMPLETE THE "REMOVAL, REPLACEMENT, AND DISPOSAL" PROCESS IN A FAIR, PROACTIVE AND EXPEDITIOUS MANNER.

Section 4(d)(6) of the Secure Networks Act allows the Commission to grant both "general" and "individual" extensions to those eligible program participants who are unable to permanently remove, replace, and dispose of covered communications equipment and services within one year of receiving reimbursement support.[23] Congress did not place a cap on the number of extensions that the Commission could grant to reimbursement program participants; it stipulated only that each individual extension could not exceed six months in length. As RWA has stated previously in the record, coordination and timing are the biggest problems in implementing a replace-and-remove program.[24] This program could be greatly simplified if Congress were to appropriate a sufficient amount of reimbursement funding as quickly as

[23] 47 U.S.C. § 1603(d)(6).

[24] Letter from Carri Bennet, RWA General Counsel to Marlene H. Dortch, Secretary, Federal Communications Commission (April 28, 2020) at p. 1. ("These earlier meetings covered the timing of covered company designations and the urgent need for Congress to appropriate a sufficient amount of funding."); Letter from Carri Bennet, RWA General Counsel to Marlene H. Dortch, Secretary, Federal Communications Commission (April 22, 2020) ("RWA April 22 Ex Parte") at p. 1. ("The concern here being on timing and the need to proceed with vendor purchase orders and contracts pending resolution of the funding being appropriated and the FCC disbursement program being finalized.")

possible and if the Commission were to delay formally designating Huawei and ZTE as covered companies (or alternatively, delay creating a definitive list of Huawei and ZTE equipment and services). First, once Congress appropriates $1-2 billion in funding, equipment manufacturers desiring to provide replacement core and RAN equipment (as well as traditional banks and credit unions) will have the legal and political peace-of-mind to finance multi-million-dollar equipment replacement projects, even *before* the Commission adopts the actual rules governing the reimbursement program. This single event would automatically extend the build-out period on the front-end. Second, by extending the time USF support can be used to maintain legacy systems, the Commission would increase the likelihood that the "old" networks ultimately destined for the scrap-heap will remain operational and problem-free until the eventual customer migration process concludes sometime *after* the "new" networks are designed, deployed, tested, and commercially-launched. While such an extension does not extend a company's build-out period on the back-end, it does help to ensure that the company's network migration date is not unnecessarily delayed because of the organization's need to re-direct time, human resources, and additional capital towards the soon-to-be-decommissioned networks in their final months of operation. The Secure Networks Act requires that program recipients complete their removal, replacement, and disposal projects within one year of the date on which they receive reimbursement funds. By taking the steps described above, Congress and the FCC will help advanced communications service providers effectively lengthen that timeframe and reduce potential problems that could derail the transition process.

Unfortunately, even if Congress appropriates sufficient funding in the next few months (or in time for the beginning of the Fiscal Year 2021 year starting October 1, 2020) *and* USF support can continue to support legacy systems through March 11, 2021, it is still overly

ambitious of Congress and the Commission to assume that entire "replace-and-remove" projects can be completed by all carriers within 12 months.[25] There exists a litany of reasons as to why compliance with a 12-month timeframe to complete a project starting when providers initially receive funding is difficult to achieve for carriers in many rural areas. First, because the FCC is likely to require removal of all of the core network equipment and all RAN components, this will require putting tower crews out in challenging rural environments to access remote cellsites in mountainous or wooded terrain not found in urban and suburban markets. Second, if the RAN deployment stages occur during winter or spring storm seasons, this effectively closes the work window for a significant portion of the already short 12-month timeframe. Third, program participants will not be the only service providers deploying networks during this 12-month window. AT&T, T-Mobile, and Verizon, the country's three remaining nationwide carriers -- each with over 100 million subscribers -- have announced aggressive 5G deployment targets, which is likely to result in a shortfall of experienced and licensed RF engineers, tower

[25] RWA April 22 Ex Parte at p. 2, FN 1. ("Network equipment vendors advise RWA that non-remote carriers with only a few dozen cellsites [cell sites?] can complete the transition (i.e. equipment procurement, deployment, testing, customer migration) in 12 months, while most carriers would require approximately 24 months.")

construction crews, and service technicians.[26] USCellular, [27] Appalachian Wireless,[28] GCI,[29] and potentially dozens more regional and rural service providers not participating in the reimbursement program are nonetheless already deploying 5G services or will launch 5G in the coming year. All of this demand and limited human resources will either delay project timelines, and/or force program recipients to pay above-market prices to "jump ahead" in the queue. Fourth, some of the vendors selling the replacement equipment might experience shortages in component deliveries, or, might themselves get delayed in manufacturing the bespoke equipment ordered by program participants. The COVID-19 crisis is showing that supply chain disruptions are possible even for mass-consumed commodities such as toilet paper and butchered meat. In an industry where there are already a limited number of mission-critical equipment manufacturers, shortages and delays seem inevitable.[30] There is now also the threat of even further consolidation in the equipment manufacturing space, even after the Huawei and ZTE are

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[26] "The 5G Workforce and Obstacles to Broadband Deployment," Hearing of U.S. Senate Committee on Commerce, Science, and Transportation (January 22, 2020). Testimony by Hon. Brendan Carr, Commissioner, Federal Communications Commission ("Industry estimates that it needs to fill another 20,000 job openings for tower climbers and telecom techs to complete this country's 5G build."); Testimony by Jimmy Miller, Chairman – National Association of Tower Erectors (NATE) ("I want to start by focusing on the most significant challenge with which our industry contractor firms like mine are dealing, which is the shortage of a properly trained and qualified workforce that is expected to possess the diverse skill set necessary to produce the expansion of universal broadband, public safety and ubiquitous 5G coverage across North America."); *see* https://www.commerce.senate.gov/2020/1/the-5g-workforce-and-obstacles-to-broadband-deployment/a753f360-1f29-4450-9058-66f884b32905.

[27] "US Cellular Constantly Activating 5G, Advanced LTE Sites, Says CTO," RCR News (March 30, 2020); *see* https://www.rcrwireless.com/20200330/carriers/us-cellular-constantly-activating-5g-advanced-lte-sites-says-cto.

[28] "5G – Frequently Asked Questions," Appalachian Wireless (April 20, 2020); *see* http://www.appalachianwireless.com/?page=5g_faq.

[29] "GCI Cuts the Ribbon on Alaska's First 5G Service," GCI New Release (April 20, 2020); *see* https://www.gci.com/about/newsreleases/gci-launches-alaskas-1st-5g.

[30] "Nokia and Ericsson Flat in Infrastructure Market as Huawei Hits 29%, Says Dell'Oro," Capacity (March 6, 2019); *see* https://www.capacitymedia.com/articles/3823275/nokia-and-ericsson-flat-in-infrastructure-market-as-huawei-hits-29-says-delloro.

banned in the U.S.. [31] Due to all of these contributing factors, most, if not all participating carriers are likely to require either general or individual extensions.

Thankfully, the Secure Networks Act does not prohibit the Commission from granting multiple six-month extensions to reimbursement program recipients.[32] Additionally, if the Commission wishes to grant general extensions (*i.e.*, extensions applied broadly to all program participants) also lasting six months, it may do so liberally, provided there are verifiable equipment and service supply chain issues necessitating such extensions and Congress is informed of this delay.[33] Finally, RWA can find no statutory basis for the Commission denying a request for an individual extension that goes beyond a general extension granted to all program participants. The FCC should remain thoughtful, flexible, and reasonable in granting justified extensions.

V. THE COMMISSION SHOULD DESIGN A PHASED EQUIPMENT REMOVAL AND REPLACEMENT PROCESS TO AVOID PROBLEMS IN THE PARTICIPANT REIMBURSEMENT PROCESS.

In the *Public Notice*, the Bureau notes that "if the Commission proceeds with having a reimbursement process similar to the one used in the broadcast incentive auction proceeding," there might be questions as to how "the deadline for completing the removal and replacement process" should be structured.[34] The issue boils down to the ideal point-in-time the Commission

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[31] "Nokia Stock Rallies Because It Might Consider Engaging With a Competitor," Barron's (February 26, 2020); *see* https://www.barrons.com/articles/nokia-stock-strategic-options-merge-partnering-competitors-5g-networks-51582751573. (Suggesting that Nokia could consider merging or partnering in certain business areas with a competitor "like Ericsson" and noting that the company is facing "intensifying competition from Huawei and Ericsson, as telecommunications carriers roll out 5G wireless networks.")

[32] 47 U.S.C. § 1603(d)(6)(C)(ii). Extensions can be granted, assuming "the Commission finds that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal" process.

[33] 47 U.S.C. § 1603(d)(6)(B).

[34] *Public Notice* at p. 3.

should reimburse program participants - - and by extension, start the 12-month shot clock for project completion stipulated by the Secure Networks Act. RWA has long supported a process that involves assigning program participants to various scheduled phases and uses some type of catalog of eligible expenses for budgeting reimbursement expenses.[35] RWA urges the Commission to follow a path similar to that used by the FCC for the post-auction migration of broadcasters after the 600 MHz incentive auction. In that proceeding, the Commission issued a *Declaratory Ruling* which determined that costs reasonably incurred prior to the close of the incentive auction were potentially reimbursable.[36] The FCC's issuance of a similar type of ruling, combined with Congress appropriating the necessary funding, will likely open-up the vendor-financing and bank-financing markets. Additionally, the Commission could also release reimbursement payments in "phases" (as opposed to lump sums) and then toll the 12-month project completion period starting from the date of a program participant's final reimbursement payment.[37] Nothing in the Secure Networks Act bars the Commission from adopting rules that allow for reimbursing program participants in installments.

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[35] RWA Comments at p. 15 and RWA Reply Comments at pp 18-21.

[36] *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Declaratory Ruling, GN Docket No. 12-268, FCC 16-47 (released April 18, 2016) ("*Declaratory Ruling*") at ¶ 1. The Commission recognized the benefits of "allowing broadcasters to get a jump start on the relocation process."

[37] The Secure Networks Act does not prohibit the Commission from making reimbursement payments prior to when costs are actually incurred. *See* 47 U.S.C. § 1603(h).

VI. WHEN DEVELOPING A LIST OF SUGGESTED REPLACEMENT COMMUNICATIONS EQUIPMENT AND SERVICES, THE COMMISSION NEEDS TO IMPLEMENT A BLANKET BAN ON COVERED COMPANY SERVICES.

Section 4(d)(1) of the Secure Networks Act compels the Commission to both "develop a list of suggested replacements" and make sure that such a list is "technology neutral" while not prioritizing capital expenditures over operational expenditures, or vice versa.[38] RWA has previously recommended that the Commission establish a safe list of approved equipment and services, and now the Secure Networks Act will make this a legal requirement.[39] RWA has also expressed concern that unless program participants are offered safe harbors from future enforcement of the 2019 NDAA or similar federal actions, the U.S. might find itself in the same position, perhaps without the opportunity of having replacement projects eligible for reimbursement.[40]

When it comes to who should develop the equipment and services "safe list", how often that list is updated, and how public input is taken into consideration, such decisions are best made (and applied at the company level, not the equipment/service level) by those federal agencies relied upon to make certain determinations under Section 2(c)(1)-(4) of the Secure Networks Act.[41] If prohibitions are instituted at the equipment/service-level, there exists an

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[38] 47 U.S.C. § 1603(d)(1).

[39] RWA Comments at p. 3 and RWA Reply Comments at p. 16.

[40] RWA Comments at p. 3 and RWA Reply Comments at p. 3.

[41] 47 U.S.C. § 1601(c)(1)-(4). These agencies include "any executive branch interagency body with appropriate national security expertise" (*e.g.*, Federal Acquisition Security Council), the Department of Commerce, and an "appropriate national security agency." *See also* 47 U.S.C. § 1608 (2) ("The term 'appropriate national security agency' means – (A) the Department of Homeland Security; (B) the Department of Defense; (C) the Office of the Director of National Intelligence; (D) the National Security Agency; and (E) the Federal Bureau of Investigation.")

element of financial risk to a carrier removing only such equipment or discontinuing only such services specifically-designated by the government and provided by a covered company. It is very reasonable to assume that any initial list of equipment or services identified by the FCC, if not a blanket ban at the company-level, might be incomplete based on future findings and national security determinations. Hypothetically, if those remaining network elements or services previously allowed are subsequently found to be a risk to national security, who will pay for having them removed? And why should a carrier face a second (and avoidable) disruption to its operations, even if such a disruptive event were reimbursable? The more prudent option is to have company-wide bans and to have the Commission solve systemic problems once and for all.[42] Nonetheless, RWA believes that any determination applied, whether at the company-level or the equipment/service-level, should be made by those same government institutions making determinations under Section 2(c)(1)-(4) of the Secure Networks Act, or by a specially-created task force within the Commission.[43]

Furthermore, the Commission needs to recognize that many individual network components that are ancillary to "covered company" equipment, or lie further upstream or downstream in the voice and data process will become obsolete after covered company equipment is fully removed. Some manufacturers of telecommunications gear create equipment (*e.g.*, cables, brackets, etc.) that is compatible only with covered company equipment but which is not manufactured by a covered company, or its subsidiary or affiliate. Thankfully, much of this equipment was purchased and installed at the same time as the covered company equipment,

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[42] RWA Comments at p. 8 and RWA Reply Comments at p. 4. If a company is found to be a risk to national security by subject matter experts in the country's intelligence community, there is little benefit to keeping any of that company's equipment or services operational in the U.S.

[43] 47 U.S.C. § 1601(c)(1)-(4).

or is easily identifiable as after-market replacement parts or services. While the costs of these equipment and services are not huge, they are also not insignificant. The reimbursement program's rules must account for how to deal with non-covered company equipment that becomes obsolete in the network replace-and-remove process.

When referencing or developing a list of permissible equipment or services, the Commission must absolutely consider "virtual network equipment and services." Software-defined networks (SDNs) and open RAN (O-RAN) interfaces and virtualized network architecture are becoming more prevalent. SDNs and O-RAN networks lower a carrier's deployment costs while also helping a carrier to future-proof its network investments. These types of networks are so flexible, in fact, they are designed to have interchangeable equipment, software, and services from many vendors and prevent carriers from being tied to one vendor that could potentially cause a security risk in the future. The principles of developing open software-based solutions are even enshrined into the 3GPP standards of a 5G network via the Software-Based Architecture (SBA).[44] The Commission should not prohibit such solutions.

RWA is also concerned about the creation of the safe list of approved vendors, products and services. RWA's members are not in a position to develop a fulsome safe list of approved vendors, products and services that can be relied on as secure. RWA is concerned that network security problems not be replicated going forward and its members subject to another forklift of their networks. RWA suggests that the FCC serve as a clearing house for acceptable vendors, products and services by listing acceptable vendors along with their products and services on its

[44] *See e.g.,* https://www.3gpp.org/news-events/1930-sys_architecture (*describing 5G system architecture 3GPP, release 15 milestone occurring in 2017*) and

website, thereby assuring small carriers that these vendors and their products and services are approved for purchase with reimbursement funds. RWA suggests that, to be included on the list, interested vendors provide the FCC with a list of their products and services along with a certification stating that the products and/or services do not contain any covered company products or services.[45] The FCC could publish this initial list on its website and allow for a review period by the public, other federal agencies and technology standards bodies to ensure that none of the listed products or services pose a national security risk or will introduce anything untrustworthy into the communications supply chain.[46] After an adequate period of time for review, the vetted list could be posted as final safe list giving small carriers assurance that purchasing products and services listed by those vendors will not be subject to challenge or replacement later. To expect small carriers or even the FCC to develop such a safe list is unrealistic given the number of vendors and their respective products and services. The vendor community must step forward and identify their respective products and services with sufficient detail. RWA also recommends that the FCC update the safe list on a quarterly or annual basis as a snapshot in time will not capture newer products and services or provide new vendors entering the market opportunity to participate during the 5-7 years it will take to conclude the program.

[45] Along this line, RWA advises the FCC to be wary of white labeled equipment that could potentially introduce security problems into the communications supply chain. White labeling is a common practice used among vendors to resell, under a license or agreement, another company's product or service as if it were its own, giving the impression that the vendor created it. RWA members are concerned that Huawei and/or ZTE equipment could be white-labeled and sold under another vendor name. *See also,* Friedman, Thomas L. "Huawei Has a Plan to Help End Its War With Trump," *The New York Times* (Sept. 10, 2019), accessed at https://www.nytimes.com/2019/09/10/opinion/huawei-trump-china-trade.html (Last year, Huawei CEO Ren Zhengfei offered to license "the entire Huawei 5G platform to any American company that wants to manufacture it and install it and operate it—completely independent of Huawei." While distinct from white-labeling, licensing may also pose a security risk to the supply chain).

[46] To provide carriers with maximum assurance about the integrity of the list, the FCC should make false certifications subject to significant enforcement penalties.

RWA looks forward to continuing to work with the FCC on developing the process for its members to secure the communications supply chain while keeping rural America connected.

Respectfully submitted,

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